

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

MARSHALL DIVISION

DATE: August 24, 2005

JUDGE

LEONARD DAVIS

REPORTER: Shea Sloan

LAW CLERK: John Love, Andrea Houston & Joe Price

**ORION IP, LLC
Plaintiff**

vs.

**STAPLES, INC., et al
Defendant**

CIVIL ACTION NO: 2:04-CV-297

**Markman Hearing
& Motion Hearing (Dkt #188 & 197)**

ATTORNEY FOR PLAINTIFF	ATTORNEY FOR DEFENDANT
Danny Williams Ruben Bains Mike Amerson Elizabeth DeRiex David Pridham Other Counsel present, but did not announce: Calvin Capshaw Wes Hill Chris Bunt	David Bahler (Home Depot) Mark Wine (Toyota) John Edmonds (Harley Davidson) William LaFuze (Harley Davidson) Other Counsel Present, but did not announce: Thad Heartfield (Toyota) Jennifer Ainsworth (Home Depot)

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:34 am

ADJOURN: 12:43 pm

TIME:	MINUTES:
9:34 am	Case called. Mr. Williams, Mr. Bains, Mr. Amerson, Ms. DeRieux, Mr. Pridham announced ready for the plaintiff. Mr. Bahler for Home Depot, Mr. Edmonds & Mr. LaFuze <i>for Harley-Davidson</i> & Mr Wine for Toyota announced ready for defendants. Other counsel present, but did not announce: Chris Bunt, Wes Hill, Calvin Capshaw for Orion; Jennifer Ainsworth for Home Depot; Thad Heartfield for Toyota.
9:35 am	Court addressed the parties regarding groundwork on how the proceedings will take place. Court will allow an opening statement and then proceed with the terms.

DAVID J. MALAND, CLERK

FILED: 8.24.2005

BY: Rosa L. Ferguson, Courtroom Deputy

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TIME:	MINUTES:
9:36 am	Mr. Williams presented opening statements to the Court.
9:49 am	Mr. Wine presented opening statements to the Court.
9:50 am	Court addressed parties and Court will hear the two disputed terms and then the defendants proceed with their disputed claims.
9:51 am	Mr. Wine continued with his opening statements to the Court.
9:57 am	Court addressed the parties regarding motions pending.
9:57 am	Mr. Edmonds presented Motion for Leave to Supplement Invalidity Contentions (Dkt #188 & 197).
10:00 am	Ms. DeRieux responded to Mr. Edmonds motions.
10:01 am	Mr. Edmonds responded.
10:02 am	Ms. DeRieux further responded.
10:04 am	Mr. Edmonds responded as to the other cases pending in Judge Ward's Court. Court asked counsel to get those case numbers (pending in Judge Ward's Court) to our Law Clerk.
10:04 am	Ms. DeRieux further responded.
10:05 am	Mr. Edmonds further responded.
10:07 am	Ms. DeRieux further responded.
10:09 am	Mr. Edmonds further responded.
10:09 am	Court addressed the parties regarding supplementation of invalidity contentions. Court will grant late filings, including 8.15.05 filings, but this will be the extent of new filings.
10:11 am	Court addressed parties on Motion to Quash. Ms. DeRieux addressed the Court and are trying to get resolved.
10:11 am	Court in recess for 5 minutes.
10:14 am	Mr. Williams addressed the Court and responded to Mr. Wine's opening statement. Mr. Williams presented Claim 1 of the '627 patent and term " proposal. " and Claim 1 of the '342 patent and term " a customized proposal. "
10:18 am	Mr. Bahler responded and agrees that terms should be consistently defined.
10:18 am	Mr. Williams further presented argument on the term "proposal."
10:26 am	Mr. Bahler responded to the plaintiff's proposed language for the term "proposal."
10:28 am	Mr. Williams continued with his presentation.

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TIME:	MINUTES:
10:28 am	Mr. Bahler further presented argument on the proposal term.
10:31 am	Mr. Williams further responded to the Court.
10:34 am	Mr. Bahler presented Defendant's proposed language for "proposal."
10:39 am	Mr. Williams responded to Mr. Bahler's presentation.
10:41 am	Mr. Williams presented plaintiff's proposed claim language on the term " customized proposal. "
10:45 am	Mr. Bahler responded.
10:48 am	Mr. Williams further responded.
10:49 am	Mr. Bahler further responded.
10:50 am	Parties agreed not to construe the term " customized. "
10:50 am	Mr. Williams addressed the Court on further terms that need to be addressed, possibly in two groupings.
10:51 am	Mr. Bahler addressed the Court further on proposal having to do with sales.
10:52 am	Mr. Williams further responded. Court gave parties the language it is leaning toward. Mr. Williams further responded.
10:54 am	Mr. Bahler further responded and defendant's would agree with Court's language.
10:55 am	Mr. Williams further responded.
10:57 am	Mr. Wine addressed the Court on Figures 1A & 1B. Mr. Wine presented language on " product pictures and product environments ".
11:08 am	Mr. Williams responded to Mr. Wine's presentation.
11:12 am	Mr. Wine responded.
11:13 am	Mr. Williams continued with his presentation on " Pictures/Segments " terms.
11:15 am	Mr. Wine responded
11:16 am	Mr. Williams continued with his argument.
11:18 am	Mr. Wine further responded as to Yourick system.
11:21 am	Mr. Williams further responded.
11:24 am	Mr. Wine responded as to the formatting element.
11:25 am	Court inquired of the parties regarding further presentation. Mr. Wine estimated ½ hour. Mr. Williams agreed.
11:25 am	Court in recess for 10 minutes.

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TIME:	MINUTES:
11:41 am	Court resumed.
11:41 am	Mr. Wine presented the Defendants' proposed language for the term "environment."
11:51 am	Mr. Williams responded to the "environment" issue.
11:55 am	Mr. Wine responded to Mr. Williams argument.
11:56 am	Mr. Williams further responded.
11:56 am	Court inquired of parties of a scenario of a pick-up truck, with cloth seats, for ranching (cows) and a tool-box.
11:57 am	Mr. Williams responded to the product environment pictures.
11:58 am	Mr. Wine responded.
12:00 pm	Mr. Williams further responded to the product vs environment.
12:01 pm	Mr. Wine further responded to the environmental pictures.
12:03 pm	Mr. Williams further responded.
12:03 pm	Mr. Edmonds presented other terms to the Court. Mr. Edmonds presented their proposed language for terms "customer" vs. "user" .
12:06 pm	Mr. Williams indicated that user and customer could be the same person.
12:07 pm	Mr. Edmonds continued with his presentation on "customer & user".
12:09 pm	Mr. Williams responded on the "customer & user" issue.
12:12 pm	Mr. Edmonds presented their proposed language for term "questions."
12:21 pm	Mr. Williams responded.
12:26 pm	Mr. Edmonds responded.
12:27 pm	Mr. Edmonds presented their issue on Claim 11 – "Questions related to at least one desired feature and at least one desired use."
12:29 pm	Mr. Williams responded.
12:29 pm	Court inquired if there were any other issues.
12:30 pm	Mr. Bahler addressed the Court on the issues remaining on the '627..
12:31 pm	Mr. Bahler presented their proposed language for term "parts."
12:32 pm	Mr. Williams responded.
12:33 pm	Mr. Bahler presented their proposed language for term "Equipment."
12:34 pm	Mr. Williams responded.

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TIME:	MINUTES:
12:35 pm	Mr. Bahler further responded.
12:36 pm	Mr. Bahler presented their proposed language for term “Receiving Information.”
12:37 pm	Court and parties discussed parts and the plurality of the language. Mr. Bahler further responded.
12:39 pm	Mr. Williams responded as to “receiving information.”
12:43 pm	Mr. Bahler responded.
12:43 pm	Court thanked the parties for excellent presentations and briefs.
12:43 pm	There being nothing further, Court adjourned.